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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.NO.2667 OF 2013

AND

M.P.NO.1 OF 2013

Bharti AXA General Insurance Co. Ltd.,
Represented by its Manager, 1st Floor,
The Ferns Icon, Survey No.28,
Next to Akme Ballet, SDoddanekundi
Off Outer Ring Road,
Bangalore - 560 037.

... Appellant/2nd Respondent

.Vs.

1. A.S.Barkath
2. Roy Antony

... Respondents/
Petitioner & 1st Respondent

PRAYER:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 19.10.2012 passed in M.C.O.P.No.883 of 2009 by the Principal Subordinate Judge, Motor Accident Claims Tribunal, Krishnagiri.

For Appellant : Mr.K.Poomalai

For Respondents : Mr.S.Sankaralingam
For Mr.V.Velusamy for R1

Notice served to R2

J U D G M E N T

The appellant/Insurance Company has filed the instant appeal before this Court on the ground of quantum alone.

2. The respondents are the claimants, who have filed a claim petition separately before the Tribunal in MCOP No.857 & 883 of 2009 and a common order was passed. Challenging the said order, the present appeal has been preferred by the appellant/Insurance company. The claimant/first respondent has filed a claim



petition in MCOP No.883 of 2009 before the Tribunal seeking compensation of Rs.8,00,000/- for the injuries sustained by her in a road accident that took place on 08.08.2009.

3. The brief case of the claimants is as follows: On 08.08.2009, at about 8.00 p.m, the claimants, who are husband and wife were proceeding in a Bajaj Goods type Auto bearing Registration No.TN29-C5249 and while nearing Krishnagiri to Salem Main Road towards Salem, at the end of Krishnagiri Milk Dairy Fly Over Bridge, a Maruthi Swift LDI Car bearing Registration No.KA 04-MG-1490, was driven by its driver in a rash and negligent manner and dashed behind the said Goods Type Auto and thereby, the 1st respondent sustained grievous injuries and immediately, they were admitted to Government Headquarters Hospital, Krishnagiri and thereafter, referred to SPARSDH Hospital, Bangalore. According to the claimants, the rash and negligent driving of the driver of the lorry was the cause of accident and since the first respondent/owner of the vehicle insured his lorry with the second respondent/insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the appellant/ insurance company by filing counter affidavit.

5. Before Tribunal, two claim petitions were filed in MCOP No.857 of 2009 and MCOP No.883 of 2009 and in both the cases, four witnesses were examined as PW1 to PW4 and Ex.A1 to Ex.P17 were marked. On the side of the respondents, no oral and documentary evidence was adduced. In so far as the case in hand namely MCOP No.883 of 2009 is concerned, the first respondent/ claimant was examined as PW2.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.8,00,000/- to the 1st respondent/claimant in MCOP No.883 of 2009. The compensation awarded under various heads are extracted hereunder.

S1 No	Heads	Amount in Rs.
1	Loss of earning power/capacity (4,500 x 12 x 16 x 80%)	6,91,200
2	Pain & suffering, transport, attender's charges & nutrition	11,050
3	Medical Bills	97,750
	Total	8,00,000

Aggrieved over the same, the Insurance Company has filed the present appeal.



३.५ प्रत्येक अर्थी



case of Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

12. The learned counsel for the first respondent submitted that the first respondent/claimant was suffered 15% disability due to the injury caused on her face and 65% disability caused on the forearm in both the right and left hands and her movements were reduced and hence, she cannot lift weight by her right hand and her left fore arm fractured and malunited by 2 degree and so she cannot life weight by her left hand, cannot do minute works. Therefore, both the right and left hands were not able to use for normal work and 65% disability was assessed. Therefore, the Tribunal has rightly adopted the multiplier method for the injuries sustained by the first respondent/claimant.

13. On a perusal of evidence, it is clear that the first respondent/claimant has lost her employment and she could not able to lift weight by using both the forearm of right and left hand, There is no rebutable evidence placed before this Court to disclaim 65% of the disability. Therefore, the multiplier method adopted by the Tribunal is fair and reasonable one. In the light of the judgement of the Hon'ble Supreme Court in the case of Sarla Varma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, 15 multiplier would be adopted instead of 16 multiplier. Therefore, the award passed by the Tribunal is modified to that extent only. Further, the Tribunal has awarded consolidate compensation towards "pain and suffering, transport, attender's charges, extra nourishment", totally for a sum of Rs.11,050/-. But, this Court is of the view that it is appropriate to award compensation separately for the above said heads. Therefore, the first respondent/claimant is entitled to Rs.10,000/- towards pain and suffering, Rs.5,000/- towards transport, Rs.10,000/- towards attender's charges and also Rs.5,000/- extra nourishment respectively. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of earning power/capacity	6,91,000 (4,500 x 12 x 16 x 80%)	6,48,000/- (4500 x 12 x 80/100% x 15)
2	Pain & Suffering, transport, attenders and nutrition	11,050	-



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Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
3	Pain & Suffering	--	10,000
4	Transport	--	5,000
5	Attender's charges	--	10,000
6	Extra Nourishment	--	5,000
7	Medical Bills	97,750	97,750
	Total	8,00,000	7,75,750

Accordingly, the first respondent/claimant is entitled to a compensation of Rs.7,75,750/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. .

14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is scale down from Rs.8,00,000/- to Rs.7,75,750/-. No costs. Connected miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the compensation of Rs.7,75,750/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six (6) months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the first respondent/claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
The Principal Subordinate Judge,
Krishnagiri.

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Copy To:

The Section Officer,
V.R. Section,
Madras High Court,
Chennai - 104.

+1cc to Mr.K.Poomalai, Advocate, S.R.No.16879
+2ccs to Mr.V.Velusamy, Advocate, S.R.No.16877

C.M.A.NO.2667 OF 2013 AND
M.P.NO.1 OF 2013

PA (CO)
PBS/04/10/2021